

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 CHRISTINA SUE HENRY,

11 Plaintiff,

12 v.

13 NANCY A BERRYHILL, Deputy
14 Commissioner of Social Security for
Operations,

15 Defendant.

CASE NO. 2:17-CV-01433-DWC

ORDER GRANTING MOTION FOR
ATTORNEY'S FEES

16 Plaintiff Christina Sue Henry filed a Motion for Attorney Fees and Costs under EAJA,
17 seeking attorney's fees under the Equal Access to Justice Act ("EAJA"). Dkt. 13. Defendant
18 asserts her position in this matter was substantially justified and requests no fee be awarded. Dkt.
19 14. Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13,
20 the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See*
21 Dkt. 3.

22 The Court concludes Defendant's position was not substantially justified. Accordingly,
23 Plaintiff's Motion is granted.
24

1 **I. Background and Procedural History**

2 On March 1, 2018, the Court found the ALJ erred by failing to properly consider
3 Plaintiff’s subjective symptom testimony. Dkt. 11. The Court found the error was harmful,
4 reversed the ALJ’s decision, and remanded the case to the Social Security Administration
5 (“Administration”) for further consideration pursuant to sentence four of 42 U.S.C. § 405(g). *Id.*

6 On May 3, 2018, Plaintiff filed the Motion. Dkt. 13. Defendant filed a Response, Dkt. 14,
7 and Plaintiff filed a Reply. Dkt. 15.

8 **II. Discussion**

9 In any action brought by or against the United States, the EAJA states “a court shall
10 award to a prevailing party other than the United States fees and other expenses . . . unless the
11 court finds that the position of the United States was substantially justified or that special
12 circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). According to the United
13 States Supreme Court, “the fee applicant bears the burden of establishing entitlement to an award
14 and documenting the appropriate hours expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437
15 (1983). The government has the burden of proving its positions overall were substantially
16 justified. *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n. 2 (9th Cir. 2010) (citing *Flores v. Shalala*,
17 49 F.3d 562, 569-70 (9th Cir. 1995)). Further, if the government disputes the reasonableness of
18 the fee, it also “has a burden of rebuttal that requires submission of evidence to the district court
19 challenging the accuracy and reasonableness of the hours charged or the facts asserted by the
20 prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th
21 Cir. 1992) (citations omitted). The Court has an independent duty to review the submitted
22 itemized log of hours to determine the reasonableness of hours requested in each case. *See*
23 *Hensley*, 461 U.S. at 433, 436-37.

1 A. *Substantially Justified*

2 In this matter, Plaintiff was the prevailing party because she received a remand of the
3 matter to the Administration for further consideration. *See* Dkt. 11, 12. To award a prevailing
4 plaintiff attorney’s fees, the EAJA also requires finding the position of the United States was not
5 substantially justified. 28 U.S.C. § 2412(d)(1)(B).

6 The Supreme Court has held “substantially justified” means “‘justified in substance or in
7 the main’ -- that is, justified to a degree that could satisfy a reasonable person.” *Pierce v.*
8 *Underwood*, 487 U.S. 552, 565 (1988). A “substantially justified position must have a reasonable
9 basis both in law and fact.” *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (citing
10 *Pierce*, 487 U.S. at 565; *Flores*, 49 F.3d at 569). The Court “‘must focus on two questions: first,
11 whether the government was substantially justified in taking its original action; and second,
12 whether the government was substantially justified in defending the validity of the action in
13 court.’” *Id.* at 1259 (quoting *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir. 1988)). Thus, for the
14 government to prevail, it must establish both the ALJ’s underlying conduct and its litigation
15 position in defending the ALJ’s error were substantially justified. *Id.* “[I]f ‘the government’s
16 underlying position was not substantially justified,’” the Court must award fees and does not
17 have to address whether the government’s litigation position was justified. *Tobeler v. Colvin*, 749
18 F.3d 830, 832 (9th Cir. 2014) (quoting *Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013)). The
19 Court notes the Administration does not have to prevail on the merits for the Court to conclude
20 the Administration’s position was substantially justified. *See Kali*, 854 F.2d at 334.

21 Here, the Court concluded the ALJ erred when he failed to provide clear and convincing
22 reasons for discounting Plaintiff’s subjective symptom testimony. Dkt. 11. The Court found the
23 ALJ failed to explain her findings and consider evidence in the record. *Id.* The Court also found
24

1 the ALJ's findings were not supported by the record. *See id.* Due to the ALJ's harmful errors, the
2 Court reversed the ALJ's decision denying benefits and remanded the case for further
3 proceedings. *Id.*

4 This is not the exceptional case where the subtle differences between the substantial
5 evidence and substantial justification standards merit remand and reversal without awarding
6 attorney fees and costs. Instead, this Court's "holding that the agency's decision . . . was
7 unsupported by substantial evidence is . . . a strong indication that the position of the United
8 States . . . was not substantially justified." *Meier*, 727 F.3d at 872. Further, there are no special
9 circumstances that render an EAJA award unjust.

10 The Court is not persuaded by Defendant's Response to the Motion. *See* Dkt. 14. The
11 Court finds Defendant is attempting to re-litigate issues raised in the briefing on the merits of this
12 case, and she selectively cites to portions of the Court's Order to now justify her position
13 regarding fees.

14 For the above stated reasons, the Court finds Plaintiff is entitled to attorney's fees under
15 the EAJA.

16 B. *Reasonableness of Fee*

17 Once the Court determines a plaintiff is entitled to a reasonable fee, "the amount of the
18 fee, of course, must be determined on the facts of each case." *Hensley*, 461 U.S. at 429, 433 n.7.
19 Here, Defendant does not challenge the reasonableness of the fee. *See* Dkt. 14. Further, based on
20 the facts and circumstances of this matter, and the briefing and attorney time sheet, the Court
21 concludes the amount of time incurred by Plaintiff's attorney in this matter is reasonable. *See*
22 Dkt. 13, 15. The Court finds Plaintiff's request for attorney's fees in the amount of \$6,848.29,
23 representing 34.80 hours of work, reasonable. *See* Dkt. 13, 15; *see also Commissioner, I.N.S. v.*
24

1 *Jean*, 496 U.S. 154, 157 (1990) (fees for time and expenses incurred in applying for fees were
2 covered in EAJA cases).

3 **III. Conclusion**

4 For the above stated reasons, the Court hereby grants Plaintiff's Motion (Dkt. 13) as
5 follows:

6 Plaintiff is awarded costs in the amount of \$400.00.

7 Plaintiff is awarded expenses in the amount of \$27.18.

8 Plaintiff is awarded attorney's fees in the amount of \$6,848.29, representing 34.80 hours
9 of work, pursuant to the EAJA and consistent with *Astrue v. Ratliff*, 560 U.S. 586 (2010).

10 The Acting Commissioner shall contact the Department of Treasury to determine if the
11 EAJA Award is subject to any offset. If the U.S. Department of the Treasury verifies to the
12 Office of General Counsel that Plaintiff does not owe a debt, the government shall honor
13 Plaintiff's assignment of EAJA Award and pay the EAJA Award directly to Todd Renda,
14 Plaintiff's counsel. If there is an offset, any remainder shall be made payable to Plaintiff, based
15 on the Department of the Treasury's Offset Program and standard practices, and the check shall
16 be mailed to Plaintiff's counsel, Todd Renda, at 6314 19th Street West, Suite 21, Tacoma,
17 Washington 98466.

18 Dated this 4th day of June, 2018.

19 

20 _____
21 David W. Christel
22 United States Magistrate Judge
23
24